IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

GIFT TAX REFERENCE No 2 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and Sd/-
MR.JUSTICE A.R.DAVE Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

COMMISSIONER OF GIFT TAX

Versus

REVA INVESTMENT PVT. LTD.

Appearance:

MR B.B. NAIK with MR MANISH R BHATT for Petitioner
MR D.A. MEHTA, MR R.K. PATEL & MR B.D. KARIA for
MR KC PATEL for the Respondent

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE A.R.DAVE

Date of decision: 16/12/97

ORAL JUDGEMENT (per R.K. Abichandani, J.)

The following question has been referred to this Court by the Income-tax Appellate Tribunal for its

opinion under Section 26(1) of the Gift-tax Act, 1958 (hereinafter referred to as `the said Act').

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the difference of Rs. 8,21,950/- on the sale of the jewellery by the assessee to its 12 wholly owned subsidiary companies was not liable to gift-tax under the provisions of the Gift-tax Act, 1958?"

The assessee is a private limited investment company. During the Assessment Year 1976-77 the assessee sold certain jewellery to its 12 wholly owned subsidiary companies in consideration of fully paid up shares of Rs. 100 each of these companies. The assessee did not file any gift-tax return for the Assessment Year 1976-77 and, therefore, a notice under Section 16(1) of the said Act dated 22.3.1979 was served on the assessee on 23.3.1979 pursuant to which the assessee filed return of gift on 9.4.1979 declaring a gift of "nil" amount. Notice under Section 15(2) was issued to the assessee in response to which replies were given on 24.7.1979 and 17.8.1979. So far as the present reference is concerned, it pertains to the transactions with the 12 subsidiary companies though the notices related to other two aspects also including the contribution of the aforesaid shares which the assessee had acquired to a partnership firm known as M/s. Unique Associates at their face value of Rs. 5,69,400/-. Admittedly, the assessee had received from the 12 subsidiary companies shares of the total face value of Rs. 5,69,400/- as consideration for the jewellery transferred by it to them. Since the assessee had transferred jewellery and cash to 12 subsidiary companies at a book value of Rs. 5,69,400/- and received shares from those companies of the face value of Rs. 5,69,400/-, according to the assessee, there was no question of any gift involved. However, on the basis of the fair market value of the jewellery and cash which amounted to Rs. 13,91,350/- on the date of transfer, the case of the revenue was that there was a gift to the extent of the amounts which exceeded the face value of the shares, that is, Rs. 8,21,950/-. The Income-tax Officer, therefore, by his order dated 12.9.1979 brought the said amount to tax under Sec. 4(1)(a) of the said Act.

The Commissioner of Gift-tax (Appeals) before whom the matter was carried by the assessee in respect of the said transaction held that "it is obvious that

inasmuch as the jewellery is the only asset of the subsidiary companies, the value of the consideration was the value of jewellery and no element of gift can be attributed. On this score the addition of Rs. 8,21,950/- is hereby deleted." The Commissioner had also held that the assessee group had created numerous firms with the sole object of inflating the cost of asset at the time of capital contribution as to either reduce the profit on sale of those assets in the firm or to dissolve it and distribute the assets to chosen partner avoiding capital gain tax, gift tax and the provisions of Section 64 of the Income-tax Act. This finding was, however, set aside by the Tribunal and the matter in that regard was restored to the file of the C.G.T. (Appeals) directing him to dispose it of afresh. The observation regarding non-existence of firms was made in context of M/s. Unique Associates and has, therefore, no direct bearing on the question involved in the present reference which is in context of the 12 subsidiaries of the assessee.

The Department carried the matter to the Tribunal against the C.G.T. (Appeals)' order holding that there was no gift involved in the sale of jewellery in lieu of shares purchased from the subsidiaries by the assessee. The Tribunal in this context held as under:-

> "............when only asset of the purchasing companies is jewellery purchased and their capital consists only of the shares issued to the assessee company, there is no question of any deemed gift as whatever will be the value taken for the jewellery will become the value of fully paid up shares issued to the assessee on the break-up method of valuing of shares of private limited companies. Consequently, we uphold the conclusion of C.G.T. (Appeals) and reject the contention of the revenue on this point."

It would thus be seen that the Tribunal was of the opinion that when the market value of the jewellery sold to these 12 companies was Rs. 13,91,350/-, the shares which were received by way of consideration for the purchase of jewellery would also be of the same value, i.e. Rs. 13,91,350/-. The Tribunal has proceeded on the footing that this jewellery purchased by the subsidiaries was their only asset and, therefore, the value of their shares would reflect the value of their assets. The Tribunal took note of the fact that these very shares of the face value of Rs. 5,69,400/- were contributed by the assessee to a firm M/s. Unique

Associates and on the assessee's own admission the market value of the jewellery sold to the 12 subsidiary companies was Rs. 13,91,350/-.

It has been contended on behalf of the revenue that, when admittedly the face value of the shares was Rs. 5,69,400/- and the valuation of the jewellery was Rs. 13,91,350/-, the value of jewellery exceeded the value of the consideration and, therefore, the amount of difference was a deemed gift made by the transferor, i.e., the assessee to the subsidiaries within the meaning of Section 4(1)(a) of the said Act. It was contended that the basis adopted by the Tribunal for determining the value of the shares which constituted the consideration for the jewellery sold to the subdiaries was erroneous and not warranted by law.

The Learned Counsel appearing for the assessee, on the other hand, contended that the intrinsic value of the shares of the subsidiaries would be the value of Rs. 13,91,350/- which was the value of the jewellery. It was contended that, according to the assessee, if the value of the shares was taken to be their face value of Rs. 5,69,400/-, since the jewellery was given as against those shares, the value of the jewellery should also be treated as Rs. 5,69,400/-. However, if the value of the jewellery is to be taken as Rs. 13,91,350/-, then the shares for which jewellery was given should also be treated as worth that amount and, therefore, there was no element of gift involved in the transaction. It was submitted that there was no finding given that any premium was taken on the value of shares. It was also submitted that the concept of deemed gift should be strictly construed and there is nothing on record to show that the consideration received for the sale of jewellery was not adequate. Reliance was placed on the decisions in 186 I.T.R. 419 (Allahabad) (Commissioner of Gift-tax (Central), Kanpur v. Motor Sales (RF), Lucknow) and 124 I.T.R. 660 (Calcutta) (Gift-tax Officer, "C" Ward, Companies Dist. I v. Venesta Foils Ltd.) in support of these submissions. It was further contended that transfer of shares by a subsidiary to the holding company was not to be treated as a transfer in view of the provisions of Section 47(v) of the Income-tax Act and therefore also there was no question of any gift arising in the said transaction.

The contention that, under Section 47 (v) of the Income-tax Act, 1961, a transfer of the capital asset by a subsidiary company to the holding company is not to be regarded as a transfer need not detain us. It is obvious

that the said provision can have no application to the deemed gifts as understood by the provisions of Section 4(1) of the said Act. That is a special provision enacted in context of charging gift tax. Section 2(xii) of the said Act defines `gift' so as to mean the transfer by one person to another of any existing movable or immovable property made voluntarily and without consideration in money or money's worth, and includes the transfer or conversion of any property referred to in Section 4, deemed to be a gift under that section. The definition of gift in Section 2(xii) of the said Act would apply in construing the provisions of Section 4 of the said Act and the provisions of Section 47 of the Income-tax Act which are enacted in context of capital gains can have no application, since the scope of the two Acts is entirely different. It would be noted from the provisions of Section 2(xxiv) of the said Act that the expression `transfer of property' is inter alia defined so as to mean any disposition, conveyance, assignment, settlement, delivery, payment or other alienation of property. Therefore, the meaning of the phrase `transfer of property' in the said Act is much wider than what the expression is understood to mean under the provisions of other laws.

Under Section 4(1)(a) of the said Act it is provided that for the purpose of the said Act where property is transferred otherwise than for adequate consideration, the amount by which the market value of the property at the date of the transfer exceeds the value of the consideration shall be deemed to be a gift made by the transferor. Therefore, when the property is transferred, the value of property as on the date of transfer is required to be ascertained. This would necessarily be prior in point of time to the transaction. In order to ascertain whether the value of consideration is adequate or not, where the consideration is in form of shares, the value of such shares would be relevant. The value of the property to be transferred and the value of the consideration to be paid for it both are required to be ascertained at a point of time prior to the actual transfer. The provision would become meaningless if the value of the property proposed to be transferred and the value of the consideration are both to be judged from the factum of transaction itself; for, in that event, each would be said to be matching the value of the other rendering the provision redundant. In the context of the present case it would amount to saying that whatever may be the value of the jewellery should be treated as the value of the consideration, that is, the shares of the subsidiaries, which were to be given by way of

consideration for the purchase of jewellery. The shares which were to be passed on for the purchase of property were different and independent of such property and would have their own valuation. To say that the value of such consideration, in the instant case the shares, should be read as whatever the value of property intended to be purchased is, would be to defeat the very purpose underlying the said provision and to artificially equate two values which factually may not be the same. It is, therefore, clear that the very basis adopted by the Tribunal of taking the value of jewellery of Rs. 13,91,350/- to be the value of the shares on the footing that the jewellery was the only asset of the companies is wholly erroneous. It is only after the transaction was through that the jewellery became the asset of the subsidiaries. Therefore, the break-up value of the shares arrived at on the basis of the post-transaction valuation of the shares, on the basis of the assets acquired by the subsidiaries as a result of the transaction, cannot be the basis for holding that the shares of the value of jewellery were given by way of consideration. After the shares were acquired as a consideration for the jewellery worth Rs. 13,91,350/they were given by way of contribution by the assessee to the firm of M/s. Unique Associates. However, the valuation of the shares at that later point of time which was made on the basis of the jewellery already acquired by the subsidiaries at Rs. 13,91,350/- cannot be made as the basis for determining the value of the shares prior to the transaction of purchase of jewellery from the assessee. We, therefore, hold that the finding of the Tribunal that when the only asset of the subsidiary companies was the jewellery purchased and their capital consisted only of the shares issued to the assessee company (for such purchase), there was no question of any deemed gift, as whatever will be the value taken for the jewellery will become the value of the fully paid up shares issued to the assessee, on the break-up method of valuing of shares of private limited companies, is erroneous.

The decision in C.G.T. v. Motor Sales reported in 186 I.T.R. 419 on which reliance was placed on behalf of the assessee cannot assist the assessee because in that case the entire assets and liabilities of the firm were taken over by the company as a going concern and, therefore, it was held that the shares allotted would encompass all the assets of the company and no deemed gift resulted from the firm to the company. Even the decision of the Calcutta High Court in Gift-tax Officer v. Venesta Foils Ltd. reported in 124 I.T.R. 660

cannot assist the assessee because in that case on the terms of the agreement, the allotment of the shares as a residue of consideration was intended to cover the entire assets transferred less liabilities undertaken by the transferee-company. It was held that the liabilities as on the date of transfer had a worth in money and were in effect quantified in terms of money. It was held that when the transferee, under the terms of the agreement, agreed to pay the liabilities attached to the business which was being transferred, it was paying as consideration money's worth of the liabilities. It is in that context that it was held that there was no deemed gift.

In view of the above discussion, we hold that the Tribunal has committed an error in law in coming to the conclusion that the difference of Rs. 8,21,950/- on the sale of the jewellery by the assessee to its 12 wholly owned subsidiary companies was not liable to gift tax under the provisions of the said Act. The question referred to us is, therefore, answered in the negative in favour of the revenue and against the assessee. The reference stands disposed of accordingly with no order as to costs.

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